

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHRISTOPHER PIERCE,)
)
Petitioner,)
)
v.) Case No. CIV-05-670-F
)
RAY ROBERTS, and PHIL KLINE,)
)
Respondents.)

**REPORT AND RECOMMENDATION ON
THE PETITIONER'S APPLICATION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS**

Mr. Pierce seeks pauper status, and the Court should deny the application.

He has filed three habeas petitions in this Court.¹ In the first two, the Court dismissed the actions because they had been filed in the wrong court and deemed moot the requests for pauper status.²

In the current proceedings, the Court informed Mr. Pierce that this action had also been filed in the wrong court.³ Mr. Pierce responded that he understood the problem, but wanted to proceed with the habeas action here and had no problem paying the \$5.00 filing

¹ See Report and Recommendation Concerning Dismissal (June 29, 2005).

² *Pierce v. Mullin*, Case No. CIV-02-945-F, slip op. at 2 (W.D. Okla. Sept. 6, 2002) (unpublished order by United States District Judge Stephen Friot); *Pierce v. Vanlandingham*, Case No. CIV-04-1174-F, slip op. at 2-3 (W.D. Okla. Sept. 28, 2004) (unpublished report and recommendation by United States Magistrate Judge Gary Purcell), adopted (W.D. Okla. Nov. 3, 2004) (unpublished order by United States District Judge Stephen Friot).

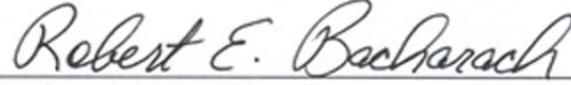
³ See Audio Recording of Telephonic Conference (June 16, 2005).

fee.⁴ Mr. Pierce's application indicates possession of \$39.86, which is ample for the \$5.00 filing fee.⁵ As a result, the Court should overrule the application for pauper status and order payment of the \$5.00 filing fee within twenty days.⁶

The Petitioner is advised of his right to object to this report and recommendation by July 19, 2005.⁷ If the Petitioner does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma.⁸ The Petitioner is further advised that if he does not timely object, he would waive his right to appellate review of the denial of pauper status.⁹

The referral to the undersigned is not terminated.

Entered this 29th day of June, 2005.



Robert E. Bacharach
United States Magistrate Judge

⁴ See Audio Recording of Telephonic Conference (June 16, 2005); Courtroom Minute Sheet (Telephone Conference) (June 16, 2005).

⁵ See 28 U.S.C. § 1914(a).

⁶ The undersigned is contemporaneously recommending dismissal of the habeas petition. But the suggested dismissal would not relieve Mr. Pierce of the duty to pay the filing fee. *See Purkey v. Green*, 28 Fed. Appx. 736, 746 (10th Cir. Aug. 17, 2001) (unpublished op.) ("Notwithstanding the district court's dismissal of plaintiff's action, he is still required to pay the full filing fee to the district court.").

⁷ See W.D. Okla. Local Civil Rule 72.1(a).

⁸ See *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999).

⁹ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).